

SENATE BILL REPORT

SB 5997

As of February 26, 2007

Title: An act relating to the exercise of reasonable care by state employees and its agents at the department of social and health services and the department of corrections.

Brief Description: Limiting liability for specified state workers for errors of judgment.

Sponsors: Senators Hargrove and Stevens.

Brief History:

Committee Activity: Human Services & Corrections: 2/22/07.

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Staff: Shani Bauer (786-7468)

Background: Under RCW 4.92.090, the state of Washington is liable for damages arising out of its tortious conduct to the same extent as if it were a private person or corporation. The state acts through its officers, elected officials, employees and volunteers. In state negligence cases, certain legal principles remain that shield the state from liability. These principles include discretionary immunity, qualified immunity, and the public duty doctrine. The law also recognizes certain exceptions to these legal principles, which have been the legal basis for jury verdicts and settlements against the state. Current law permits a negligence claim against the state when a person other than the state commits a criminal act harming another.

The Department of Corrections (DOC) and the Department of Social and Health Services (DSHS) operate programs which require employees to choose a course of action under conditions in which the outcome from either choice could be fatal or devastating. These agencies operate supervision programs for criminal offenders released from incarceration or detention. DSHS investigates child and adult cases of abuse and neglect. Agency employees must rely upon their training, education and experience to make decisions often based upon circumstantial evidence. Sometimes the decision an employee makes results in a bad outcome, despite exercising reasonable care in making the decision.

Courts in medical malpractice cases may use an "error of judgment" jury instruction. The jury instruction is favorable to defendant doctors because it emphasizes to the jury that the mere fact the patient was injured or there was a bad result does not necessarily mean there was negligence or other wrongful conduct on the doctor's part. An "error in judgment" jury instruction is appropriate when, in arriving at a judgment, the doctor exercised reasonable care and skill within the standard of care and the doctor had a choice among competing therapeutic techniques or medical diagnoses.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

In the past several years, the state has been found liable or has agreed to settle cases related to programs at DOC and DSHS. The verdicts and settlements in these cases range in the millions of dollars.

Summary of Bill: The state DSHS and DOC, through their employees and agents, are not liable when the state worker or agent exercises reasonable care and selects one of two or more alternative courses of action, even though the course of action chosen results in a poor outcome.

Intent sections are codified clarifying that the Legislature does not intend to immunize the state against negligence actions.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This bill is an improvement over the current system and acknowledges that people are doing the best that they can. This bill is not incompatible with the gross negligence standard. However, if local government had to choose between the two, the preference would be for a gross negligence standard. The Department of Natural Resources employs about 50 supervisors who supervise offenders. It would be helpful if those employees could be included.

CON: DSHS has concerns that this will make the current system worse. Caselaw has established a series of immunities in statute for the Department. They are worried that a new standard may eliminate these immunities. The trial lawyers still oppose this legislation, but believe that it takes a more balanced approach in attempting to add some protections for state employees. The concern is that this standard would give some form of discretionary immunity for ministerial acts, which discretionary immunity was never intended to do.

Persons Testifying: PRO: Sophia Byrd McSherry, Washington State Association of Counties; Bonnie Bunning, Department of Natural Resources.

CON: Joseph W. Olson, DSHS; Larry Shannon, Washington State Trial Lawyers Association.